APPENDIX A.

Opinion of the Supreme Court of Illinois.

Docket No. 33634—Agenda 33—September, 1955.

The People ex rel. James T. Callahan, County Collector, Appellee, v. Gulf, Mobile and Ohio Railroad Company, Appellant

Mr. Justice Daily delivered the opinion of the court:

Appellant, the Gulf, Mobile and Ohio Railroad Company, filed objections in the county court of Madison County to the county collector's application for judgment and order of sale of real estate, delinquent for nonpayment of taxes for the year 1951. A motion by the collector to strike the objections was sustained and, thereafter, the court entered judgment against appellant for $18,578.38, the amount of tax paid under protest and embraced by the objections. The revenue being involved, appellant has perfected a direct appeal to review both the order striking its objections and the subsequent judgment.

The parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value (Ill. Rev. Stat. 1951, chap. 120, pars. 501, 502). By its stricken objections, appellant, whose property was assessed at State level along with other railroads, alleged that its own property has been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value. The objections further alleged that the fraud was brought about when the county assessor knowingly assessed local property "upon a valuation not to exceed 10.2 per cent of the full, fair cash value"; when the county

board of review knowingly closed and certified the tax lists and books without revising the general level of assessments; and when the Department of Revenue, which section 146 of the Revenue Act charges with the duty of lowering or raising the total assessed value of property certified by any county so that property will be assessed at its full, fair cash value, knowingly and intentionally fixed an equalization rate, or multiplier, at "a per cent which would produce a debased equalized and assessed valuation of not to exceed 60% of the full, fair cash value of locally assessed property." Appellant objected against paying taxes on rates higher than would have been developed if locally assessed property had been at one hundred per cent full, fair cash value in the taxing formula by which rates were computed. Translated into figures, it is appellant's contention that because locally assessed property was fraudulently and intentionally valued at less than full, fair cash value, the resulting increase in rates caused its tax bill of $45,017.81 to be excessive by $18,578.38.

Some question is raised as to whether appellant, who admits that its own property was correctly assessed, has pursued the proper remedy. We find, however, that this court has observed on several occasions that since valuations must be the result of honest judgment and not of mere will, it follows that an assessment may be impeached both when fraudulently made at too high a rate, and when fraudulently made at too low a rate (**People's Gas, Light and Coke Co. v. Stuckart**, 286 Ill. 164, 174; **Chicago, Burlington & Quincy Railroad Co. v. Cole**, 75 Ill. 591, 594). Further, in a long line of cases, it has been held that the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes. (See: **People ex rel. Ross v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.**, 381 Ill. 58, 61, and cases there cited.) Here the essence of appellant's objections is that

there was a fraudulent discrimination resulting from the undervaluation of locally assessed property which had the effect of denying appellant equal protection of the Revenue Act, and of subjecting it to taxation lacking in both constitutional and statutory uniformity. We conclude that a proper remedy has been pursued.

Under section I of article IX of the Illinois constitution, the courts, in the absence of fraud, have no power to review or determine the value of property fixed for purposes of taxation by the administrative officers to whom such function has been delegated. (**People ex rel. Tedrick v. Allied Oil Corporation**, 388 Ill. 219; **Keokuk & Hamilton Bridge Co. v. People**, 145 Ill. 596; **Spencer & Gardner v. People**, 68 Ill. 510.) It is only when the valuation has been fraudulently made that it is subject to judicial review. (**Kinderman v. Harding**, 345 Ill. 237; **People's Gas, Light and Coke Co. v. Stuckart**, 286 Ill. 164.) In the latter regard, we have held that error in the exercise of honest judgment will not invalidate the tax, that fraud is never presumed, and that mere overvaluation is not sufficient to establish fraud. (**People ex rel. Miller v. Chicago, Burlington and Quincy Railroad Co.**, 300 Ill. 399; **Keokuk and Hamilton Bridge Co. v. People**, 161 Ill. 514.) On the other hand, it is held that overvaluation may be so excessive, under some circumstances, as to justify the conclusion that it was not honestly made and that it was known to be excessive. In such cases courts will intervene to prevent a constructive fraud. (**People ex rel. Rhodes v. Turk**, 391 Ill. 424; **Pacific Hotel Co. v. Lieb**, 83 Ill. 602.) Where an assessment is sought to be impeached for fraud, the burden is on the objector to show either actual fraud by clear and sufficient evidence, or to show that an assessment is so grossly excessive as to amount to evidence of fraud and an indication that the taxing authorities, in making the same, wilfully and intentionally discriminated against the said objector. (**People ex rel.**

Tedrick v. Allied Oil Corporation, 388 Ill. 219; **People ex rel. Johnson v. Robison,** 406 Ill. 280.) Although the foregoing cases speak only in terms of fraudulent overvaluation of property, we are of the opinion that logic and justice require that the same established principles apply where an assessment is sought to be impeached on the grounds of fraudulent undervaluation. Cf. **Coulter v. Louisville & Nashville Railroad Co.,** 196 U. S. 599, 49 L. ed. 615; **Sundry Lake Iron Co. v. Township of Wakefield,** 247 U. S. 350, 62 L. ed. 1154; **Sioux City Bridge Co. v. Dakota County,** 260 U. S. 441, 67 L. ed. 340.

The first question which presents itself is whether, in light of the principles enunciated in the cited cases, appellant's objections sufficiently charged either actual or constructive fraud. Insofar as actual fraud is concerned it is elementary that it devolves upon the party claiming it to state the facts relied upon as constituting it. (**Sterling Gas Co. v. Higby,** 134 Ill. 557; **Sanitary District v. Gifford,** 257 Ill. 424; **Anderson v. Anderson,** 339 Ill. 400.) In the objections before us the various steps taken by the taxing authorities are set forth and, in general terms, are alleged to have been fraudulent, wrongful and illegal. Bearing in mind, first, that mere overvaluation or undervaluation is not sufficient to establish fraud and, second, that the presumption obtains that the transactions assailed by appellant were done in good faith and with honest motives, it is apparent that such general charges, unaccompanied by any facts showing fraudulent or dishonest actions or motives, are mere expletives and conclusions of the pleader and are not good pleading. As such, the charges were not admitted by the collector's motion to strike and the trial court properly held that the objections failed to sufficiently charge actual fraud. **Owens v. Green,** 400 Ill. 380; **People ex rel. Parker v. Board of Appeals,** 367 Ill. 559; **Sanitary District v. Gifford,** 257 Ill. 424; **Fogg v. Blair,** 139 U. S. 118, 35 L. ed. 104.

Considering next the question of whether appellant's final pleading is sufficient to make a showing of constructive fraud, we find it alleged generally that locally assessed property was valued, assessed and equalized at not exceeding sixty percent of its full, fair cash value, whereas appellant's property was assessed and equalized at the full, fair cash value thereof. By means of a schedule, drawn by appellant and incorporated into the objections, it is specifically alleged that the full, fair cash value of all locally assessed property amounted to $827,453,141 for the year 1951, but that all of such property had been placed on the Madison County tax rolls for that year in an amount totaling only $496,471,885. The same schedule bears the allegation that the full, fair cash value of appellant's property was $2,302,180. It is appellant's contention that the 330 million dollar discrepancy in the reckoning of locally assessed property values is so gross as to demonstrate that the taxing authorities could not have been honest in their valuation, thus entitling appellant to relief from a constructive fraud. We are of the opinion, however, that the rule of law contended for cannot be applied to the case made out by the bare allegations of value relied upon.

It is alleged that "locally assessed property was not assessed at its full, fair cash value." Standing alone this is but a conclusion of the pleader. We have the further allegation, however, by means of appellant's schedule, that the full, fair cash value of locally assessed property was $827,452,131. For all that appears in the objections, the figure alleged by appellant has been arrived at by the mechanical process of recomputing values on the basis of the bare conclusion that the equalized assessed valuation arrived at by the taxing authorities represented but sixty per cent of the full, fair cash value of locally assessed property. In the absence of facts showing a basis, such a mechanical increase in the values fixed by the taxing au-

thorities is itself merely a conclusion of the pleader. There are no facts alleged which either afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit a court to make the comparison in values the appellant seeks to draw.

It is our conclusion, therefore, that the objections do not state sufficient facts to make out a case of constructive fraud, within the meaning of the authorities relied upon by appellant, and we hold that the county court was justified in sustaining the motion to strike them. Accordingly, its judgment is affirmed.

Judgment affirmed.

(R. 10-14.)

APPENDIX B.

Dissenting Opinion of the Honorable Harry B. Hershey, Chief Justice.

Chief Justice Hershey, dissenting:

To deny a hearing on the merits because of a pleading defect seems to me violative of both the letter and spirit of modern procedural statutes and rules of practice. As a result of both legislative enactment and prior judicial opinion, this court is committed to the position that pleadings are to be liberally construed with a view of doing substantial justice between the parties.

Section 235 of the Revenue Act of 1939 requires a taxpayer to specify "the particular cause of objection" and directs the courts to "determine the matter in a summary manner, without pleadings, and * * * pronounce judgment as the right of the case may be." To determine the sufficiency of a tax objection from a "pleading" standpoint, one must consider whether it adequately informs the court and opposing counsel of the defense relied upon. (**People v. Chicago, Burlington and Quincy Railroad Co.**, 281 Ill. 500, 503; **People v. Shortall**, 287 Ill. 150, 151.) In the instant case I do not understand how there could have been the slightest doubt as to the nature of the defense. If the objection were more explicit it doubtless would be subject to the criticism of alleging evidentiary facts.

A case directly in point is **People v. K. and H. Bridge Co.**, 287 Ill. 246, where this court stated at pages 250-1: "There was a legal objection to the amount of the tax, which the appellant had a right to prove, and the court erred in striking it from the files. That objection was that the property was arbitrarily, knowingly and fraudulently assessed at its full market or cash value while all other property was arbitrarily and knowingly assessed at about

forty per cent of such value in accordance with an established rule and long custom for assessing property * * * It is sufficient for an objector to show such willful and intentional violation of the constitutional provision, and where an assessment shows a very great disparity and discrimination, which could not reasonably have arisen from an error of judgment, the courts will give relief. * * * The Objection showed such alleged disparity and discrimination between the full cash value of appellant's property and the valuation of forty per cent of such cash value of all other property, and the appellant had a right to prove the objection." I say the same in this case—*the appellant had a right to prove the objection.* (Emphasis added.)

(R. 14.)

APPENDIX C.

Constitutional Provisions, Statutes and Rules Involved.

1. **Due process and equal protection clauses of Fourteenth Amendment.**

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> (1955 Ill. Rev. Stat., Vol. I, p. 6.)

2. **Provisions of the 1939 Revenue Act, as amended and in effect in the year 1951, providing for full value assessments of all property subject to ad valorem taxation.**

General provisions in respect to the value at which locally assessed property is to be assessed.

> "§ 20. Real property shall be valued as follows:
>
> (1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale. * * *"[1]
>
> (1951 Ill. Rev. Stat., Ch. 120, Par. 501.)

> "§ 21. Personal property shall be valued as follows:
>
> (1) All personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * "[2]
>
> (1951 Ill. Rev. Stat., Ch. 120, Par. 502.)

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[1] Other paragraphs of Sec. 20 provide for the same method of evaluating leaseholds, buildings or non-carrier structures on canals, railroads, etc.

[2] Other paragraphs of Sec. 21 provide a similar basis for evaluating credits, and provide that labor or services, annuities, and roy-

Full Valuation Acts of 1945.

The following analysis relates only to the applicable provisions of the statute which are here involved and which were a part of the so-called FULL VALUATION REVISION of 1945, or should be considered in connection with that revision for the purposes of the present case.

Provisions of the Act Before July 1, 1945, and in Effect Until January 1, 1946.	Provisions of the Act After July 1, 1945, and Effective January 1, 1946, With Any Changes Effective in 1951.
ASSESSMENT OF RAILROAD PROPERTY.	
	"Sec. 80. The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be noncarrier real estate as hereinbefore defined.
	"The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit but shall make due allowance for any noncarrier real estate.

alties shall be valued at "present value" and that capital stock, except of manufacturing, mining, printing and publishing, stock breeding, banking and building and loan companies, shall be valued at fair cash value by the Department of Revenue, and that in the case of the excepted capital stock such value shall be assessed at a local level as in the case of other locally assessed property.

"For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as

Not Amended

is found by the Department to be noncarrier real estate as hereinbefore defined: Provided that only so much of the intangible personalty of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included."

Sec. 80; Chap. 120, Par. 561.[3]

LISTING AND DESCRIPTION OF RAILROAD PROPERTY.

"Sec. 85. The right of way, including the superstructures of first, second, third and other main tracks and all side tracks and turnouts, and the stations and improvements of the railroad company on such right of way and all other operating property and non-operating personalty of such railroad company shall be denominated 'railroad track' and shall be so listed and valued, and shall be described in the assessment thereof as a strip

[3] Section references are to 1939 Revenue Act, as amended. Page and paragraph references are to 1951 Illinois Revised Statutes.

Not Amended

of land extending on each side of such railroad track and embracing the same, together with all the stations and improvements and other operating property thereon, commencing at a point where such railroad track crosses the boundary line in entering the taxing district, and extending to the point where such track crosses the boundary line leaving such taxing district, or to the point of termination in the same, as the case may be, containing .... acres more or less (inserting name of taxing district, boundary line of same, and number of acres and length in miles), and when advertised or sold for taxes no other description shall be necessary: * * *."

Sec. 85, Ch. 120, Par. 566.

RAILROAD PROPERTY ASSESSED AND EQUALIZED AT FULL, FAIR CASH VALUE.

"Sec. 86. The *full fair cash* value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and

taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceeding $1,000, which shall be deemed to have a situs in the taxing district in which the same are located. * * *

"The Department shall equalize and distribute the *full, fair cash* value of the property of every railroad company (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county clerks of the respective counties who shall extend taxes against such values the same as against other property in such taxing districts." (Italics, new language.)

Sec. 86, Ch. 120, Par. 567.

The words "full fair cash" were inserted in the first paragraph and the words and figure "full, fair cash" were inserted in the second paragraph of this section by the 1945 amendments.

S. B. 229, L. 1945, 1212.

RAILROAD PROPERTY LISTED AND TAXED AS REAL ESTATE.

"Sec. 88. The county clerk shall procure, at the expense of the county, a record book, the form to be prescribed by the Department, in which to enter railroad property as listed for taxation, and shall enter the valuations [as] assessed, corrected and equalized in the manner provided by law; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by law for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and filed in the

The word "as" stricken, in 1945, S. B. 229. Section substantially the same since 1872. L. 1871-1872, Sec. 43, General Revenue Act of 1872.

L. 1937, Page 1011, Sec. 10 of Act of July 8, 1937, Ill. R. S., Ch. 120, Par. 56.10.

office of the county clerk for future use. The taxes on all railroad property shall be extended as on real estate, and shall be subject to the same penalties, dates of payment and methods of enforcement as other real estate taxes." (Underlined for emphasis.)

Sec. 88, Ch. 120, Par. 569.

THE DEPARTMENT'S GENERAL DUTIES AND POWERS.

"Sec. 130. The Department shall: * * * (3) Prescribe general rules and regulations, *not inconsistent with law*, for local assessment officers relative to the assessment of property for taxation, which general rules and regulations shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction; * * * (7) Equalize the valuation and assessment of property throughout the State between the different counties of the State and fix

Not Amended

the aggregate amount of the assessment for each county upon which taxes shall be extended; * * *"

Sec. 130, Ch. 120, Par. 611. (Italics ours.)

"Sec. 131. The Department shall have power:

"(10) To adopt, from time to time, rules *not inconsistent with law*, for ascertaining the fair cash value of the capital stock, including the franchise, of corporations assessed by it, for ascertaining the fair cash value of railroad property assessed by it, and for the guidance of local assessment officers relative to the assessment of property for taxation." (Italics ours.)

Not Amended

Sec. 131, Ch. 120, Par. 612.

THE DUTY OF DEPARTMENT TO EQUALIZE LOCALLY ASSESSED PROPERTY.

Limited and Proportionate Equalization—Stricken and Not Replaced.

Sec. 146. The Department shall act as an equalizing authority. It shall examine the abstracts of property as-

Full Value Equalization Provided Without Limitation and Without Authority to Deviate.

Sec. 146. The Department shall act as an equalizing authority. It shall examine the

sessed for taxation in the several counties as returned by the county clerks [and the original assessments made by it], and shall equalize the assessments as in this Act provided. The Department [may so] lower or raise the total assessed value of property in any county as returned by the county clerk [as shall make the property in such county bear a just relation to the assessed value of property in other counties. The total amount of such increase or decrease in any one county shall not exceed ten per cent of the total assessed value of all property in the State as returned for purposes of taxation. The Department shall not reduce the aggregate assessed valuation in the State; nor shall it increase such aggregate valuation, except in such amount as may be necessary to a just equalization. The Department may proceed to equalize assessments in any year after the tenth day of September for the counties from which it has received the complete abstract of assessment and for which it abstracts of property assessed for taxation in the several counties as returned by the county clerks and shall equalize the assessments as in this Act provided. The Department *shall* lower or raise the total assessed value of property in any county as returned by the county clerk *so that such property will be assessed at its full, fair cash value.*

By means of a comparison of assessed valuations, as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable, the Department shall annually ascertain and determine the percentage relationship, for each county of the State, between the valuations at which locally-assessed property is listed by assessors and revised by boards of review or boards of appeals, as the case may be, and the estimated full, fair cash value of such property.

shall have completed its original assessment of property, when it shall have received the complete abstract of assessment from four-fifths of the counties of the State and shall have completed its original assessment of property for four-fifths of the counties of the State. In case the abstract of assessment has not been received from any county, or in case the original assessment of property by the Department has not been completed, the Department may, for the purpose of such equalization, estimate the total valuation of property to be determined by the local assessment officers for such year or the total original assessments of property for any county to be made by the Department, as the case may be (consideration being given to whatever information the Department may have as to the total valuation of property for any county to be determined by the local assessment officers or as to the total original assessments of property for any county to be

With the ratio so ascertained and determined for each county, the Department shall then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent.

Sec. 146, Ch. 120, 627.
(Italics, new language.)

Note. (Sec. 146, as amended in 1945, provided *one hundred percent* (100%) of full, fair cash value as the standard or measure to be applied in the equalization of all property assessed at the local level, and required a calculation of the multiplier upon this basis. Since the state level assessments were required to be equalized at one hundred percent, uniformity was provided for, unless elsewhere or otherwise limited or obstructed.

This section prior to 1945 provided that the Department should equalize county assessments so that

made by it, as the case may be, for such year, and to the total valuation of property for any county, as determined by the local assessment officers, or to the total original assessments made by the Department, as the case may be, for the preceding year). Upon the completion of all assessments for any county and the receipt of the abstract of assessment from such county by the Department after an equalization has been completed, as hereinbefore provided, and certification thereof has been made, the assessments for such county shall be equalized on the same basis of value as the assessments for other counties have been theretofore equalized and certification thereof s h a l l thereupon be made to the county clerk of such county.] Language within [ ] stricken by 1945 amendment. Underlining is for emphasis. 1943 R. S., Ch. 120, 627.

they had a "just relation," limited the percent of increase in any county and restricted changes in the aggregate state valuation to those necessary for a "just equalization." Notwithstanding other provisions of the act requiring assessments to be at fair cash value, and that the Department should supervise such assessments and perform its equalization function in a manner "not inconsistent with law," these provisions tacitly accepted and tolerated a system of f r a c t i o n a l assessments throughout the state wholly lacking in uniformity between counties and taxing districts, and gave legislative recognition to the use by the Department of subjective factors and undefined "moral" and other considerations, which might be changed at any time or to meet any situation, in equalizing such assessments upon an ununiform basis. There had thus been enabled and sanctioned the avoidance of both full value and uniformity. The "just relation" and "just equalization" provi-

sions and 10 percent limitation were stricken in 1945 and not replaced. Thereafter there existed no statutory obstacle to, or expressed or implied permission for the avoidance of, equalized assessment at full, fair cash value.

This section, as amended, was the cornerstone of the 1945 Full Valuation Revision.)

AUTHORITY OF DEPARTMENT TO ESTIMATE.

(Repealed, 1945 Act.)

[Sec. 147. In all cases of partial return from any county where the number of defaulting towns or districts does not exceed one-third of the whole number of towns or districts in the county, the Department may estimate the valuation in the towns or districts from which returns have not been received and may equalize the total valuations as in other cases.] * * * 1943 R. S., Ch. 120, 628.

Stricken—Not Replaced.

AUTHORITY OF DEPARTMENT TO CLASSIFY AND DEVIATE.

(Repealed, 1945 Act.)

[Sec. 148. The Department in equalizing the valuation of property as listed and assessed in different counties, shall consider the following classes of property separately, viz.:

(1) Lands, including lands classified as non-carrier real estate;

(2) Town and city lots, including lots classified as non-carrier real estate;

(3) Railroad property other than non-carrier real estate;

(4) Capital stock, including the franchise, of corporations and associations, assessed thereon by the Department;

(5) Personal property locally assessed including the capital stock and franchises of corporations and associations locally assessed thereon.

After such consideration, the Department shall deter-

Stricken—Not Replaced

mine such rates of addition to or deduction from the listed or assessed valuation of each of such classes of property in each county, or to or from the aggregate assessed value of each of such classes in the State, as may be deemed by the Department to be equitable and just, such rates being in all cases even and not fractional; and such rates, as finally determined by the Department, shall not be combined.] * * * 1943 R. S., Ch. 120, 629.

(1951 amendment to act adding Sec. 148a, not effective till 1/1/52. L. 1951, 1180.)

DUTY OF DEPARTMENT TO DETERMINE "RATE PERCENT" FOR MULTIPLIER TO PRODUCE FULL, FAIR CASH VALUE, WITHOUT LIMITATION OR QUALIFICATION.

Proportionate Equalization—Out.

Sec. 149. The assessments of all property shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may [believe the valuation to be too low,] such rate per cent as will raise the same to

Full Value—In.

Sec. 149. The assessments of all property, *as returned by the county clerks,* shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may *find the valuation to be less than full, fair cash value,* such rate per cent as will

its [proper proportionate value,] and by deducting from the aggregate assessed value thereof, in every county in which the Department may [believe the valuation to be too high] such per cent as will reduce the same to its proper value. [Town and city lots shall be equalized in the same manner herein provided for equalizing other property, and, at the option of the Department, may be combined and equalized with lands.] —R. S. Ch. 120, 630.

raise the same to its *full, fair cash value,* and by deducting from the aggregate assessed value thereof, in every county in which the Department may *find the valuation to be more than full, fair cash value, such per cent as will reduce the same to its full, fair cash value.*

Sec. 149, Ch. 120, 630. (Italics, new language.)

[ ] language stricken, 1945 amendment.

(1951 amendment to Sec. 149, not effective till 1/1/52. L. 1951, 1180.)

AUTHORITY OF DEPARTMENT TO CLASSIFY AND TO DEVIATE TO OBTAIN "JUST" EQUALIZATION.

(Repealed, 1945 Act.)

Sec. 150. When the Department shall have separately considered the several classes of property, as hereinbefore required, the results shall be combined in one ta-

ble, and the same shall be examined, compared and perfected in such manner as the Department shall deem best to accomplish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates for each class of property. 1943 R. S., Ch. 120, 631.

Stricken — not replaced. (No authority to thus deviate from full value given by any other provision of the act.)

DUTY OF DEPARTMENT TO CERTIFY MULTIPLIER FOR LOCALLY ASSESSED PROPERTY AND OF RAILROAD ASSESSMENTS.

Sec. 151. When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks [the rates] finally determined by it to be added to or deducted from the listed or assessed valuation of [each class of] property in the several counties. Language within [ ] stricken by amendment. (Remainder of section unchanged except as indicated in italicized language.) 1943 R. S., Ch. 120, 632.

Note. (Sec. 151 as amended is correlated with Sec. 146 which requires the cer-

Sec. 151. When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks *the percentage* finally determined by it to be added to or deducted from the listed or assessed valuation of property in the several counties, as returned by the respective county clerks. The respective assessments made by the Department on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroad companies) shall be certified by it to the county clerks of

tification of a rate percent. Elimination of property classification in the certification of the former rates is essential for the purpose of obtaining uniformity and is to be considered in the light of the repeal of Secs. 148 and 150.

It is to be noted that Secs. 151 and 146 were unaffected by the enactment of new Sec. 148a and the amendment to 149 in 1951, which added and amended sections became effective January 1, 1952. The Act still requires, therefore, the certification of the multiplier as the rate percent necessary to produce uniform equalization at 100 per cent of full, fair cash value. In fact, up to the present year there has been no attempt to comply with new Sec. 148a.)

the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such companies or associations are located.

The Department shall also certify to the county clerks of the proper counties the assessments made by it on property owned or used by railroad companies operating within this State, and the distribution of such assessments among the respective taxing districts within the several counties. The county clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as against *other property* in the taxing districts to which such assessments of railroad property are allocated or distributed.

The assessments on the capital stock, including the franchise, of telegraph companies shall also be certified

to the county clerks by the Department.

Sec. 151, Ch. 120, 632. (Italics, new language.)

Sec. 162a, added to 1939 Revenue Act in 1945, as recommended by Joint Legislative Commission.

Sec. 162a. The maximum percentages of full, fair cash value at which taxes may be extended are those set forth in the Constitution and in this and other Acts; provided that further restrictions shall apply to taxing districts of less than 500,000 population, as follows:

1) During the five-year period beginning January 1, 1946, and ending December 31, 1950, unless changed by referendum as provided in paragraph 5 of this section, no tax rate shall be restricted to a percentage less than sufficient to yield an amount equivalent to the product of: (a) the full, fair cash value of the taxable property in the taxing district as equalized or assessed by the Department for the current year, (b) the 1942 ratio of assessed to full, fair cash value reported and published by the Department for the county in which the taxing district is situated, *provided* that if the taxing district lies in more than one county, the average ratio of assessed to full, fair cash value shall be used, which average ratio shall be determined by the Department and shall give effect to the relative full valuations of property in the areas of the taxing district situated in the two or more counties, and (c) the maximum tax rate applicable to taxes levied for the year 1945, or authorized for the year 1946 by a referendum held prior to January 1, 1946.

2) During the five-year period beginning January 1, 1946, and ending December 31, 1950, unless changed by referendum as provided in paragraph 5 of this section, the

greatest amount by which any tax rate may exceed the product of: (a) the 1942 ratio of assessed to full, fair cash value reported and published by the Department for the county in which the taxing district is situated, *provided* that if the taxing district is situated in more than one county, the average ratio of assessed to full, fair cash value shall be used, which average ratio shall be determined by the Department and shall give effect to the relative full valuations of property in the area of the taxing district situated in the two or more counties, and (b) the statutory tax-rate limitation or rate authorized by referendum as effective for the levy and assessment year 1942 shall be 15 per cent; *provided* that in no one year during the aforementioned five-year period shall the tax extension be increased to exceed 5 per cent of the maximum extendable in 1942. The provisions of this paragraph shall not modify any other restrictions upon maximum extendable tax rates. The restrictions herein provided shall be inapplicable to any established tax rate limit expressed in dollars. The restrictions herein provided shall be inapplicable to limit tax levies for which minimum qualifying rates are prescribed to establish eligibility to receive state grants for poor relief and equalization aid for educational purposes to less than such minimum qualifying tax rates.

3) The maximum tax rate authorized by any referendum held prior to January 1, 1946, in accordance with the provisions of any Act authorizing the extension of tax rates, shall continue in force as provided by the terms of such referendum or the statutory provision applicable thereto; *provided* that, beginning January 1, 1946, the tax rate extended shall not exceed one-half the tax rate authorized by any such referendum prior to January 1, 1946, with the further limitation that during the five-year period beginning January 1, 1946, and ending December 31, 1950, the tax rate extended shall not exceed the rate required to produce a tax extension greater by fifteen per cent than the

maximum permissible tax extension for the year 1942 or the year in which the referendum was held, whichever is later; *provided further* that in no one year during the aforementioned five-year period shall the tax extension be increased to exceed five per cent of the maximum extendable for the year 1942 or for the year in which the referendum was held, whichever is later.

4) If the tax rate authorized by a referendum held before January 1, 1946, for extension thereafter is reduced by the provisions of paragraph 3 above, so that the rate as reduced is insufficient to yield a tax extension equivalent in amount to the maximum that could have been produced by the extension of the rate authorized under the terms of the referendum on the assessed valuation of property for the taxing district in the year which the referendum was held then the tax rate authorized by the referendum shall only be reduced to a rate which is sufficient to yield such amount.

5) During the five-year period beginning January 1, 1946, and ending December 31, 1950, the question of establishing a tax rate limit either higher or lower than that otherwise provided for by law may be presented to the legal voters of any taxing district by the corporate authorities of the taxing district and shall be so presented upon the receipt by such corporate authorities, not less than ninety (90) days before a regular or special election, of a petition signed by not fewer than five (5) per cent of the legal voters in such taxing district, which percentage shall be determined on the basis of the number of votes cast at the last general election preceding the filing of such petition or one thousand legal voters in such taxing district whichever is less, specifying the tax rate to be submitted; *provided* that no tax rate limit shall be lowered more than one-third beneath the limit otherwise provided for by law. In case no general election is held in such a taxing district, the petition shall be signed by not fewer than

five (5) per cent of the registered voters in such district or one thousand (1,000) such registered voters, whichever is less. Such proposition shall be submitted to the voters at the next regular election for officers for such taxing district held during the aforementioned five-year period; *provided* that if no such election is required to be held at intervals of not more than two years, such proposition may be submitted at a special election to be called by the corporate authorities of such district at a time to be fixed by such corporate authorities within the aforementioned five-year period. In case such an election is called pursuant to the filing of a petition, the election shall be set for a day not less than ninety (90) days nor more than one hundred twenty (120) days following the filing of such petition.

The ballots to be used in any such election upon the question of adopting either a lower or higher tax-rate limit than that otherwise provided for by law shall be separate ballots and shall be in substantially the following form:

Shall the maximum tax rate for the ..... fund of ..... (identify taxing district) .....be established at.....per cent on full, fair cash value?	YES NO

If a majority of all ballots cast on such proposition shall be in favor of the proposition, the tax-rate limit so established shall become effective with the levy and assessment year next following the election and it shall be the duty of the county clerk to reduce, if necessary, the amount of any taxes levied thereafter, in such a manner as to give effect

to the rate limit so established unless and until the rate so established is changed as provided by law; provided that nothing in this section shall be construed as precluding the extension of taxes at rates less than that authorized by such election. *Provided, further*, that the proposition to authorize either a higher or lower tax rate limitation than that otherwise applicable may, in the discretion of the corporate authorities, when acting on their own motion, or the petitioners requesting a vote on such proposition, be restricted in effect to the tax levy of a given year or series of years, the rate limitation thereafter to revert to that otherwise provided by law. No more than two such propositions shall be submitted for any one fund of any taxing district at any one election and in case two such propositions are submitted at one election and a majority of votes cast on each proposition shall be in favor thereof, only the tax-rate limit authorized in the proposition receiving the higher number of favorable votes shall become effective; *provided* that propositions to establish tax-rate limits either higher or lower than those otherwise authorized by law shall not be submitted more often than once in any two-year period.

No proposition to increase a tax-rate limit in accordance with the provisions of this section shall be submitted unless the tax-rate limit in question stands at the maximum that may be secured by the terms of any referendum elsewhere provided for by law.

If the proposition to be presented in the manner set forth in this section provides for the adoption of a tax-rate limit higher than that authorized to be submitted by any other statutory provision, the amount by which such tax-rate limit may exceed the applicable statutory limitation shall be twenty-five (25) per cent.

The referenda authorized by the terms of this section are subject to the provisions of Sec. 28-3 of 'The Election Code,' approved May 11, 1943.

6) If the provisions of any paragraph of this section shall be declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs shall continue in full force and effect.

This section shall not apply to any tax rate of any taxing district having a population of 500,000 or more inhabitants.

(Sec. 162a, Ch. 120, 643a, S. B. 314, L. 1945, 1229.)

3. **Provisions of the 1939 Revenue Act defining the remedy of tax objection.**

Section 194 of the Act provides that a taxpayer who has protested the payment of a tax is required to appear at the next application of the County Collector for judgment and order of sale and to object to the taxes in relation to which the protest is made, and provides further:

> "Where the taxpayer appears and files objection the court shall hear and *determine the matter according to the right of the case* and enter judgment for any part of the taxes, *or order a refund of any part of the taxes, so paid under protest.* Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year." (Ch. 120, 675.)

Subsequent sections of the Act provide the time and manner of making application for judgment and require the publication of waiver of notice that such application will be made, and that judgment will be sought fixing the correct amount of any tax paid under protest.

Section 234 relates to the form of the application of the Collector for judgment and requires him to report all lands and property on which taxes or special assessments have not been paid and to support the same by affidavit. By statute this must include railroad property (Sec. 88).

Section 235 provides:

> "Sec. 235. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a *summary manner*, without pleadings, and *shall pronounce judgment as the right of the case may be.* * * * If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. * * *
>
> "In all judicial proceedings of any kind, for the collection of taxes and special assessments, *all amendments may be made which, by law, could be made in any personal action pending in such court,* * * *." (Italics ours.)

APPENDIX D.

Rule 39 of the Illinois Supreme Court.

As in effect prior to January 1, 1956:

"Each party shall file a printed brief in the cause * * * No alleged error or point not contained in such brief shall be raised afterwards * * *."

As in effect on and after January 1, 1956:

"Each party to a cause in this court shall file a printed brief * * *. No alleged error or point not contained in the brief shall be raised afterwards * * *."

APPENDIX E.

Extracts from official reports pertaining to inequality in state and local level assessments of property in Illinois, presented to the Illinois Supreme Court by Appellant's brief in that court (pp. 24-29, Appendix 59-63, R. S.).

1945 and 1955 Reports to the Governor and General Assembly on Illinois Tax Problems.

Report of joint legislative committee to investigate tax problems of March 2, 1945 (Preliminary to Full Valuation Acts of 1945).

State of Illinois.

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Joint Legislative Committee to Investigate Tax Problems.

Report to Governor Dwight H. Green.

March 2, 1945.

Page 3

Springfield, March 2, 1945.

To His Excellency, Hon. Dwight H. Green, Governor of Illinois:

Since its appointment in mid-1944, this Committee has devoted itself to a careful and thorough appraisal of the property tax problem in Illinois. Numerous hearings and conferences have been held with representatives of civic organizations, associations of local governmental officers, and taxpayers' groups, as well as with various state, county, and local officials. Recommendations reflecting almost every shade of opinion have been urged in these meetings and we have made an earnest attempt to work out a practical and equitable solution to a highly involved problem.

I. The Problem.

The statutory provision fixing "full fair cash value" as the ". . . assessed valuation for all purposes of taxation, limitation of taxation, and limitation of indebtedness . . ." until 1943 at least had been rather generally ignored. Property typically was assessed at ratios of full valuation ranging from 20 to 75 per cent. While changes in the basis of assessment had been made from time to time by various assessing officers, these ordinarily were slight in importance and gradual in their nature and but rarely had the practice of assessing fractionally been explicitly discarded. Although the present full-value requirement has been a part of Illinois property tax law since 1926, the

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courts and the legislature alike have condoned or ignored departure from this standard. But the implications and practical effects of the practice of debasing assessments to a level below market or full valuation generally have been neither appreciated nor fully understood.

* * * * * * *

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II. Specific Proposals.

To date, this Committee has agreed on the principal features of a program designed to afford a lasting and thoroughgoing resolution of the present difficulties. It deserves emphasis that this program is one that would entail a minimum of substantive change in our revenue laws and procedures and that would preserve in its essentials the characteristic features of the local financial structure of the State.

The problems to which reference has been made obviously are the direct effects of non-uniformity in assessment, a condition that has prevailed through the whole

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history of the property tax in Illinois. Their solution then, basically, is the adoption by the General Assembly of measures designed to secure assessment uniformity.

Intra-county assessment uniformity. In order to secure a greater measure of uniformity and consistency in the treatment of assessable property within the counties, we recommend that machinery be created to strengthen county equalization while at the same time preserving in its elements the present structure of local assessment performed principally by elective township assessors.

* * * * * * *

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Inter-county assessment uniformity. There would remain the problem of securing uniformity among the counties. At the present time, the Department of Revenue is responsible for equalizing local assessments (county total assessed valuations) for the application of the state property tax rate. As suggested, no state rate has been extended since 1932; as a consequence, the Department, and before it the Tax Commission, has not in recent years exercised its equalization authority. * * * Furthermore, *the present statutory requirement of full-value assessment deserves to be clarified. The present equalization powers are hedged in with restrictions on the extent to which individual county assessments and the state total may be altered. Some of these should be removed, so that the Department could proceed as expeditiously as possible to secure uniform full-value assessment for the entire State.*

* * * * * * *

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State assessments. If the foregoing program were enacted into law, and local assessments increased to full value, capital stock and the property of railroad compa-

nies would be treated the same as property subject to local assessment jurisdiction. Full-value assessment means uniformity among counties and this in turn *implies a correspondence within any one county between the assessment ratio applied to state-assessed property and that on property assessed locally.*

Report of the School Problems Commission No. 3, March, 1955 (Submitted in respect to School Problem Legislation at the 69th General Assembly):

From page 7 of the Report:

Letter of Transmittal.

To Governor William G. Stratton, and the Members of the 69th General Assembly:

The Illinois School Problems Commission No. 3 was created pursuant to House Bill No. 923 of the Sixty-eighth General Assembly, approved June 30, 1953. The members hereby submit the final report containing its major recommendations, and a brief summary of some of the research studies upon which they are based. Respectfully submitted. (Signed by the Chairman and fourteen other members of the Commission and by the Director of Finance and Superintendent of Public Instruction, *ex officio* members.)

From page 9 of the Report (Summary of Major Recommendations):

"12. Equalization of assessments by the Department of Revenue in accordance with the letter and spirit of existing statutes."

From page 20 of the Report:

The Commission is gravely concerned by the continuing deterioration of administration of existing provisions for

the assessment of property and collection of taxes levied against both real estate and personal property in this state.

The failure to assess both real and personal property at realistic values, coupled with the failure to apply a proper multiplier for equalization purposes, has been found to be an ever present factor in the plight of financially embarrassed school districts throughout the state.

In 1946, immediately following the enactment of the so-called "Butler Bills" (Ill. Revised Statute, Chapter 120, Sec. 627-633) the average equalized assessed value of real estate in Illinois was at least 74 percent of the full fair cash value. By 1952 equalized assessed valuations of real estate had dropped to 51 percent.[3]

Note:

---

(3) According to information received from the Department of Revenue, percentages of assessments to full values for the years 1946 to 1952 were as follows:

1946 — 74.48	1949 — 62.18
1947 — 64.00	1950 — 56.78
1948 — 63.20	1951 — 52.62

1952 — 51.32

From page 21 of the Report:

In Cook County the de facto classification of real property has resulted in residential property in that county having, in 1953, an average equalized assessed valuation of only 47 percent of fair market value.

* * * * * * *

We do not intend to imply by reference in this report to Cook County that assessment, either of real estate or of personal property is less adequate or less equitable there than in certain other areas of the state. Such is not the case. There are many other counties in Illinois where the

general level of assessments, both of real estate and of personal property is lower. Instances have been cited to us of original assessments of real estate at 5 percent or less of full value, resulting in equalized assessed values of less than 29 percent of full value in individual townships. The school finance problem is, however, more serious in the suburban area of Cook County than in most other areas, due to the combination of factors previously mentioned which has brought such a tremendous increase in school population to some of the suburban school districts. Much can be done, however, throughout the state to improve present assessment practices. Poor assessment in one area does not justify equally poor assessment in another.

From page 22 of the Report:

One of the more serious consequences of this inequity of assessment is the resultant effect upon the distribution of state equalization aid to schools. Under our present formula, or any other formula dependent upon the same factors, the district which has the lowest equalized assessed value will, assuming its educational tax rate is equal to or above the qualifying rate, receive, proportionately, the greatest share of state aid.

Thus in two unit districts each having actual property values equal to $30,000 per pupil in average daily attendance, one having equalized assessed values of only 50 percent of actual value would, under the 1953-55 formula, receive state equalization aid in the amount of $98 per pupil, while the other, having equalized assessed values of 70 percent of actual value, would receive only $68 per pupil in such aid. Assuming that each district has 5,000 pupils in grades 1 through 12, the district which lies in the county or township which has done the better job of chiselling on its assessments will receive $490,000 in equalization aid

against $340,000 for the other, an advantage of $150,000. No change in formula can solve this problem. Its solution requires equitable assessment of all property, real and personal, throughout the state.

Two major factors contribute to the inadequacy and inequity of assessment in Illinois. They are: * * *

From pages 22-23 of the Report:

2. This brings us to the second major factor, i. e., failure of the Department of Revenue to require equalization of assessments between counties at an adequate and realistic level (required by the statute to be between 99 and 101 percent of full fair cash value as determined by the Department). There are numerous instances where the Department of Revenue has applied a multiplier of one in counties where the assessed value of the real estate within the county is 50 percent or less of full value. This soft attitude of the Department, in our opinion, encourages public officials in Cook County in their classification of real estate for assessment purposes and contributes to the low level of assessed values in suburban residential areas. It also relieves assessment officers in other counties of the necessity of equalizing assessments within and between townships.

APPENDIX F.

JUDGMENT OF THE COUNTY COURT OF MADISON COUNTY, ILLINOIS.

Order on Objections of Gulf, Mobile and Ohio Railroad Company to Application of the Collector for Judgment for 1951 Taxes Paid Under Protest.

The objections of Gulf, Mobile and Ohio Railroad Company, to the application of the Collector of taxes for Madison County, Illinois, for judgment for 1951 taxes paid under protest having come on for hearing, and the Court having been fully advised in the premises, finds:

1. That the Court heretofore, on the thirtieth day of December, 1954, sustained the motion of the Collector to dismiss and strike from the files in this cause the certain objections of the Gulf, Mobile and Ohio Railroad Company, as amended to taxes levied for the year 1951, upon said Objector's property in Madison County, Illinois, and paid by the Objector under protest, numbered and identified as follows, to-wit:

Objector's Objection No. 1, to parts of County Taxes, and to other taxes levied for the year 1951, upon Objector's property in Madison County, Illinois:

Objector's partial, alternative objections to Objection No. 1, being the objections numbered: 2A-1, 2B-1, 2C-1, 2D-1, 2F-1, 2G-1, 2H-1, 3A-1, 3B-1, 3C-1, 4A-1, 5A-1, 6A-1, 6B-1, 7A-1, 8A-1, 8B-1, 9A-1, 10A-1, 10B-1, 11A-1, 12A-1, 13A-1, 14A-1, 15A-1, 15B-1, 15C-1, 15D-1, 15E-1, 15F-1, 15G-1, 15H-1, 15I-1, 15J-1, 15K-1, 15L-1, 15M-1, 15N-1, 16A-1, 16B-1, 16C-1, 16D-1, 16E-1, 16F-1, 16G-1, 17B-1, 17C-1, 17D-1, 17E-1, 17F-1, 17G-1, 17H-1, 18A-1, 18B-1, 18C-1, 18D-1, 19A-1, 19B-1, 19C-1, 20A-1, 20B-1, 20C-1, 20D-1, 20E-1,

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2. That the Collector is entitled to an order and judgment against the said Objector for the amounts of taxes to which the said objections dismissed and stricken from the files, as aforesaid, were made, except where the amounts paid by the Objector under protest upon said taxes are covered by other objections to which said motion was not directed and which should be reserved for future determination, as hereinafter provided.

It Is, Therefore, Ordered and Adjudged that the Collector shall have judgment upon his application against the said Objector for each and all of the items of tax to which the said dismissed and stricken objections were made by Objector's Objection No. 1, and by Objector's partial, alternative objections to Objection No. 1, being the certain objections numbered and identified as follows, to-wit: 2A-1, 2B-1, 2C-1, 2D-1, 2E-1, 2F-1, 2G-1, 2H-1, 3A-1, 3B-1, 3C-1, 4A-1, 5A-1, 6A-1, 6B-1, 7A-1, 8A-1, 8B-1, 9A-1, 10A-1, 10B-1, 11A-1, 12A-1, 13A-1, 14A-1, 15A-1, 15B-1, 15C-1, 15D-1, 15E-1, 15F-1, 15G-1, 15H-1, 15I-1, 15J-1, 15K-1, 15L-1, 15M-1, 15N-1, 16A-1, 16B-1, 16C-1, 16D-1, 16E-1, 16F-1, 16G-1, 17B-1, 17C-1, 17D-1, 17E-1, 17F-1, 17G-1, 17H-1, 18A-1, 18B-1, 18C-1, 18D-1, 19A-1, 19B-1, 19C-1, 20A-1, 20B-1, 20C-1, 20D-1, 20E-1, 20F-1, 20G-1, 20H-1, 20I-1, 20J-1, 20K-1, 20L-1, 21A-1, 21B-1,

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It Is Further Ordered and Adjudged by the Court that all other tax objections of the Gulf, Mobile and Ohio Railroad Company to any of said 1951 taxes be reserved for the future determination of this Court.

Michael Kinney,
County Judge.

APPENDIX G.

JUDGMENT OF THE SUPREME COURT OF ILLINOIS UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January, in the year of our Lord, one thousand nine hundred and fifty-six, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice
Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice George W. Bristow — Justice Ralph L. Maxwell
Justice Ray I. Klingbiel — Justice Charles H. Davis
Latham Castle, Attorney General
Robert G. Miley, Marshal

Attest: Fae I. Searcy, Clerk Pro Tempore

Be It Remembered, that, to-wit: on the 19th day of January, 1956, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

People ex rel. James T. Callahan, County Collector of Madison County, Illinois, Appellee, vs. Gulf, Mobile and Ohio Railroad Company, Appellant.	Appeal from County Court Madison County Obj. No. 31. Error to
No. 33634	

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and in-

spected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the County Court of Madison County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

I, Fae I. Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 23rd day of March, 1956.

/s/ Fae I. Searcy,
Clerk pro tempore.

(Seal)

FILED
JUL 13 1956
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166.

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

BRIEF

In Support of Objections to This Court's Jurisdiction and in Opposition to the Petition for Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166.

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

BRIEF

In Support of Objections to This Court's Jurisdiction and in Opposition to the Petition for Writ of Certiorari.

INTRODUCTORY OBSERVATION.

The State's Attorney of Madison County, Illinois, expressly elects to stand upon the opinion of the Supreme Court of Illinois as his response to the Petition for Certiorari. The question before that Court and the opinion rendered therein conclusively shows that the matter was decided by that Court solely upon questions of practice and procedure in the courts of Illinois in cases arising under Section 235 of the Revenue Act of 1939 (Section 716, Chapter 120, Illinois Revised Statutes for 1951) rela-

tive to the remedy of filing tax objections by taxpayers to ad valorem property taxes upon the application of the County Collector of taxes for judgment and sale of real estate for delinquent and unpaid taxes. Respondent will, therefore, respond to the Petition for Certiorari in this brief and will also direct his remarks to the question of this Court's jurisdiction to review the decision of the Illinois Supreme Court decided upon a matter of local practice and procedure.

OBJECTIONS TO THE JURISDICTION OF THE COURT TO GRANT WRIT OF CERTIORARI.

Respondent objects pursuant to Rule 24 (1 and 2) to the jurisdiction of this Court to grant a Writ of Certiorari in this cause on the ground that there was no federal question of substance decided by the Supreme Court of Illinois which is subject to review by the United States Supreme Court under Rule 19.

The jurisdictional question presented to this Court upon this Petition for Certiorari is as follows:

DOES THE UNITED STATES SUPREME COURT HAVE JURISDICTION TO REVIEW MATTERS OF LOCAL PRACTICE AND PROCEDURE IN THE STATE COURTS UNDER LOCAL STATUTES WHICH CREATE THE REMEDY AND GOVERN THE MANNER AND FORM OF THE PROCEDURE THEREUNDER?

ALTERNATIVE QUESTION PRESENTED FOR REVIEW.

Even if this Court should take jurisdiction in this cause, Respondent cannot acquiesce in Petitioner's conception of the questions directed to this Court. Those questions seek to avoid the law of Illinois governing the creation of the

remedy of filing tax objections and the manner and rules relating to procedure thereunder. Respondent deems the questions presented to be as follows:

(1) Did Illinois deprive Petitioner of due process or equal protection of the law by holding that Petitioner's tax objections failed to plead or allege sufficient facts which afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit the Court to make the comparison in values which the Petition seeks to draw?

(2) Stated in more concise language, did Illinois deprive Petitioner of due process or the equal protection of the law by holding that Petitioner's written tax objections failed to allege facts, as distinguished from conclusions of the pleader, sufficient to make a clear showing of the unequal effect of the tax as to justify Petitioner's allegation of fraud in the manner of assessment valuations?

(3) Does the due process and equal protection of the law under the Fourteenth Amendment prohibit inequality by state tax officials in the assessment of different classes of property for ad valorem taxes?

ARGUMENT.

I.

OBJECTIONS TO JURISDICTION.

A.

Rules of Court.

Rule 19 of this Court provides that a Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor, and requires that a federal ques-

tion of substance to have been decided by the state court, which question had not, previously been determined by this Court, or decided in a way probably not in accord with applicable decisions of this Court.

Rule 24 permits objections to the jurisdiction of the court to certiorari to be included in briefs in opposition to the petition. Under these rules Respondent expressly relies upon the opinion of the Illinois Supreme Court to show that that Court's decision was rendered upon matters of local practice and procedure. In further support of that Court's decision, Respondent proceeds to a discussion of the Illinois Statutes involved and cases decided by the Illinois Supreme Court thereunder.

B.

Illinois Statutes.

The remedy and practice of filing tax objections in Illinois is created and governed by Section 235 of the Revenue Act of 1939 (Section 716, Chapter 120, Illinois Revised Statutes for 1951). Petitioner quotes in part from this Section of the Statute, but by deliberate and artful omission fails to quote the Statute sufficiently in full and omits a material portion of the sentence of the Statute quoted (see Petitioner's Petition, page 20). The sentence of Section 235 more fully quoted is as follows:

> "**The Court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to entry of judgment against the same**, the Court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: provided, that no person shall be permitted to offer any such defense unless such writing specifying the

particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt," etc. (Emphasis supplied.)

The first part of the above sentence of the statute was omitted by Petitioner and this omission is apparently for the artful purpose of creating an illusion as to the Illinois remedy and procedure on tax objections, which illusion is directly and diametrically opposed to the interpretation of the Illinois Supreme Court as to the procedure thereunder. Those decisions are also opposed and contrary to Petitioner's interpretation of the language, "summary manner, without pleadings". To correct this illusionary contention, Respondent will proceed to a discussion of Illinois cases decided as to the manner of procedure under this Section of the Illinois Revenue Law.

C.

Illinois Decisions on Tax Objection Procedure.

Petitioner would have this Court believe that the above Section of the Statute does not require any pleadings whatsoever. But this is not true. Although formal complaints, answers and motions are not contemplated as in civil cases governed by the Illinois Civil Practice Act generally, the Illinois Supreme Court has expressly held that:

> "Where an application for judgment and order of sale against lands for nonpayment of taxes is made, the delinquent list serves as a declaration and the notice as process."
>
> People v. Coal Belt Electric Railway Company, 311 Ill. 29, 31-32, 142 N. E. 495.

It has further been held by that Court that:

> "The written objections state the issue upon which the cause is submitted for hearing. They constitute

the statement of the defense and must be regarded as a part of the record."

People v. Wabash Railroad Company, 271 Ill. 206, 207, 110 N. E. 1025.

In the case of People v. C. R. I. & P. Railway Company, 269 Ill. 513 (110 N. E. 49), on page 517 the Illinois Supreme Court said:

"It is also contended by appellee that the objections of appellant are not properly before the court because they are not made a part of the record by the bill of exceptions. They are copied in full by the clerk in the common law record, but appellee **insists they were not pleadings**, and could only be made a part of the record by incorporating them in the bill of exceptions. It is true, the common law form of pleading does not obtain in cases of this character, but it has been held that the delinquent list filed by the collector is in the nature of a pleading and serves the office of a declaration (Wiggins Ferry Co. v. People, 101 Ill. 446). The objections of the property owner **serve the purpose of a plea by him, and we think the objections are properly preserved as a part of the record without being incorporated in the bill of exceptions**" (Emphasis supplied).

Under the Illinois Statute the delinquent list prepared and filed by the tax collector constitutes a pleading and takes the place of a complaint or declaration. The written objections of the taxpayer constitute a pleading and take the place of a plea or answer of the taxpayer. The express language of Section 235 requires the written objections of the taxpayer **to specify the particular cause of the objection.** The meaning of the remainder of the sentence of Section 235, particularly the phrase "summary manner, without pleadings," means that no further pleadings are

required and that the tax collector is not required to plead or file any formal pleadings in answer to an owner of property objecting to taxes (People v. Dunleth Bridge Co., 322 Ill. 99, 155, 152 N. E. 526).

The tax collector is not required to file any further written pleadings or motions but he can, if he sees fit, as in the case before the Court, file a written motion to strike the taxpayer's objections from the files (People v. C. & E. I. Railway Co., 336 Ill. 506, 509, 168 N. E. 294). The collector's motion to strike need not be in writing, but may be orally made (People v. Sullivan, 238 Ill. 386, 388, 86 N. E. 306).

In considering the effect of Section 235 of the Illinois Revenue Act, the Illinois Supreme Court has held that the only triable issues in the County Court are those raised by the written objections and that any ground not so stated will not be considered for the first time on appeal in the Illinois Supreme Court (People v. C. & N. W. Railway, 1 Ill. 2d 255, 259, 115 N. E. 2d 339) (People v. Trustees, 407 Ill. 291, 294, 95 N. E. 2d 421) (People v. N. Y. C. Railroad Co., 369 Ill. 192, 196, 15 N. E. 2d 689) (People v. U. of I., 328 Ill. 377, 36 N. E. 2d 724) (C. & A. Railroad Co. v. People, 155 Ill. 276, 279, 40 N. E. 602) (Karns v. People, 73 Ill. 274, 280).

It is readily apparent from the above decisions of the Illinois Supreme Court that the remedy of filing tax objections in Illinois is created by an Illinois Statute and that the manner of local procedure and the pleadings thereunder are governed by the statute and the decisions of the Illinois Supreme Court. It now becomes important to analyze the opinion of the Illinois Supreme Court in this case which Petitioner seeks to review by Certiorari.

D.

Opinion of Illinois Court.

Respondent filed a written motion to strike Petitioner's tax objection filed in the County Court of Madison County and specified in such objections twenty-one different grounds therefor, asserting that the tax objections did not constitute a legal defense to the application of the collector for judgment. The County Court granted the Motion to Strike and Petitioner appealed to the Illinois Supreme Court which has affirmed the judgment of the County Court. In the opinion of the Illinois Supreme Court (page 4, Petitioner's Appendix) the Illinois Supreme Court says:

> "The first question which presents itself is whether, in light of the principles enunciated in the cited cases, appellant's objections sufficiently charge either actual or constructive fraud."

The Court then held that it was apparent that general charges of fraud, unaccompanied by any facts showing fraudulent or dishonest actions or motives are mere expletives and conclusions of the pleader and are not good pleading; that such charges were not admitted by the collector's motion to strike and that the objections failed to sufficiently charge actual fraud. As to whether the written objections charged constructive fraud, the Court referred to a schedule prepared by the Petitioner which amounted to a recomputation of what the Petitioner claims should have been the total value of all property locally assessed in Madison County and stated that (Petitioner's Appendix, page 5):

> "We are of the opinion, however, that the rule of law contended for can not be applied to the case made by the bare allegations of value relied upon."

The Illinois Court then said (Petitioner's Appendix, page 5):

> "It is alleged that 'locally assessed property was not assessed at its full, fair cash value'. Standing alone this is but a conclusion of the pleader. We have the further allegation, however, by means of **appellant's schedule,** that the full, fair cash value of locally assessed property was $827,452,131. For all that appears in the objections, the figure alleged by appellant has been arrived at by the mechanical process of recomputing values on the **basis of the bare conclusion** that the equalized, assessed valuation arrived at by the taxing authorities represented but 60 per cent of the full, fair cash value of locally assessed property. **In the absence of facts showing a basis, such a mechanical increase in the values fixed by the taxing authorities is itself merely a conclusion of the pleader. There are no facts alleged which either afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit a court to make the comparison in values the appellant seeks to draw.**" (Emphasis supplied.)

The Illinois Court then held that disregarding the conclusions of the pleader, "the objections do not state sufficient facts to make out a case of constructive fraud, within the meaning of the authorities relied upon," by the Petitioner in this Petition. It, therefore, is obvious that the Illinois Court decided the case below solely upon a matter of local practice and procedure in the state courts of Illinois relating to tax objections and that there is no federal question of substance within the meaning of Rule 19 for this Court to review on Certiorari. This court, therefore, has no jurisdiction to review this case on Petition for Certiorari and this Petition should be denied.

Moreover, the Illinois Court held, and there can be no serious contention, that the written objections of the Petitioner contained any matter or allegation which afforded the trial court or the Illinois Supreme Court a basis to make any comparison in values between the assessed valuations made by the Department of Revenue as to Petitioner's property and the assessed valuations made of all locally assessed property by the local assessors and as equalized by the Department of Revenue through its determination of an equalizing factor which, when certified to and applied by the County Clerk to locally assessed property, was designed to bring locally assessed properties to full, fair cash value. In this respect there was a complete void in the Petitioner's tax objections and the very heart of their contention was omitted from their tax objections by omitting allegation of facts which would afford such a basis for comparison in values. Petitioner simply failed to set forth matter of substance in its objections sufficient to bring it within the Illinois law regarding fraud, actual or constructive, in assessment valuations claimed to be discriminatory. This omission in substance in Petitioner's objections also fails to meet the law as announced by this Court in such cases to the effect that the taxpayer must make a clear showing of the unequal affect of the tax so as to justify their complaint (Charleston Federal Savings & Loan Association v. Alderson, 324 U. S. 182, 184, 89 L. Ed. 857, 65 S. Ct. 624; affirming 126 W. Va. 506; 30 S. E. 2d 513). The insuperable difficulty with Petitioner's Petition for Writ of Certiorari is that it runs headlong into the established decision of this Court in the last cited case on the matter of substance which it attempts to present. Consequently, Respondent will proceed to the argument made by Petitioner under its conception of this case.

II.

THERE WAS NO DENIAL OF DUE PROCESS OR EQUAL PROTECTION OF THE LAW TO THE PETITIONER UNDER THE ESTABLISHED DECISIONS OF THIS COURT.

The question which the Petitioner seeks to have reviewed by its Petition for Certiorari has already been passed upon by this Court in the case of Charleston Federal Savings & Loan Association v. Alderson, 324 U. S. 182, 89 L. Ed. 857, 65 S. Ct. 624. The similarity between the cited case and the case at bar is overwhelming because the discrimination claimed in the Charleston Association case was discrimination in the assessment valuations of property belonging **to the same class** as defined by the Statute of the State of West Virginia. That case is stronger than the case at bar due to the fact that **here the discrimination is claimed to be between properties which were not within the same class** under the provisions of the Illinois Revenue Act. The Supreme Court in the Charleston Association case treated an appeal as a Petition for Writ of Certiorari and considered the merits of the case. Upon a consideration of the merits the Court held that there was no violation of the equal protection of the laws of the Fourteenth Amendment in respect to the discrimination in assessment valuations of the two types of property involved within the same statutory classification. In the case at bar under Illinois law, the assessment of railroads for taxation is made under a separate and distinct section of the statute from all other taxable property and according to a different assessment formula which has recently been upheld by the Illinois Supreme Court and a Petition for Writ of Certiorari by this Court denied in the case of C. & NW. Railway Co. v. Department of Revenue, 6 Ill. 2d 278, ... N. E. 2d ...., certiorari denied .... U. S. ..., 100 L. Ed. 692, ... S. Ct. ... In the

Charleston Association case the Petitioners were building and loan associations whose personal property was classified under the Statute of West Virginia as Class 1 property. The local assessor valued the building and loan company money at 100 per cent, bonds notes and accounts receivable at 70 per cent, installment accounts at 65 per cent of face value. Livestock and agriculture products were valued at approximately 50 per cent of purchase value. Accounts receivable and notes of small loan companies were assessed at 85 per cent of face value. The court found that there was no unreasonable discrimination involved and that there was no denial of the equal protection of the law even though there was a difference in the mode of assessing the property of the petitioners in that case as compared with the assessment of like property of other taxpayers. The court said that the equal protection clause does not prohibit inequality in taxation, which is not shown to be the result of intentional or systematic undervaluation of some but not all of the **taxable property in a single class.** The Court found that there was a reasonable justification for the difference in the assessed valuations and denied the Petition for Writ of Certiorari. In the instant case **the property of the Petitioner is not like property of the same class** as the locally assessed property of other taxpayers whose property Petitioner claims to have been undervalued in assessment. The difference in treatment of Petitioner's property under the Illinois Constitution and provisions of the Illinois Revenue Act conclusively shows that the two classes of property can not be treated alike with exact equality. For that reason the difference in assessed valuations do not violate the equal protection clause of the Fourteenth Amendment.

Respondent desires to call attention to the provisions of Section 1, Article IX, Constitution of Illinois, 1870. That provision is as follows:

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Under Illinois law the Illinois Supreme Court has construed the constitutional provisions as creating two classes of property for taxation. First, that the General Assembly could authorize the levying of a tax by values so that every person or corporation should pay tax in proportion to the value of his or its property, the value to be ascertained by some person or persons elected or appointed in such manner as the General Assembly should direct. The second part of the constitutional provision authorizes the General Assembly to tax peddlers, etc., **persons or corporations owning or using franchise or privileges in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.** In compliance with the concluding part of the constitutional provision, the General Assembly has enacted as a part of the General Revenue Act of 1939, the sections exclusively applying to the assessment of railroads (Sections 79-90, The Revenue Act of 1939; Chapter 120, Sections 560-571,

Illinois Revised Statutes for 1951). Recognizing the difference of railroad property from other taxable property, Illinois enacted these Sections of the Statute solely and exclusively for the assessment of railroads and provided therein an entirely different formula to determine the assessed valuation of railroads for taxation as distinguished from all other property in Illinois subject to direct property taxes. The above Sections of the Statute delegate to the Department of Revenue, the successor to the State Tax Commission of Illinois, the power and duty to determine the assessed valuations of railroad property directly. The reason for this difference in treatment of railroad property was due to the fact that many railroads are interstate carriers owning property in many states of the Union and, in case of its rolling stock, only a part of which should be treated for tax purposes as subject to the jurisdiction of Illinois for taxation. Within the State of Illinois, a further breakdown in assessment valuations is required to be made and determined as between the various counties in which the railroad maintains its tracks and operates its property. No other taxpayer and no other type of property appears to be exactly comparable to the property of the railroad and, therefore, the difference by statute in the manner and treatment of railroad property for taxation as regards the manner of assessment. The main similarity between the railroad assessment Act and the remainder of the Illinois Revenue Act is that the value of the property is to be determined at the full, fair cash value thereof. Section 561, Chapter 120, Illinois Revised Statutes, 1951, requires the Department of Revenue in determining the fair cash value of the property of the railroad company to take into consideration certain factors which constitute the formula peculiarly and especially applicable to railroads. That formula was approved in the Chicago & Northwestern Railway v. Department of Revenue case above cited and as to which this Court has

denied Petition for Writ of Certiorari. Respondent desires to call attention to many other Sections of the Illinois Revenue Act of 1939, which do require all other property to be assessed at full cash value. Section 501, Chapter 120, Illinois Revised Statutes, 1951, requires real estate to be valued at its full cash value; Section 502 requires personal property to be valued at its fair cash value. All real estate and personal property, excepting the capital stock of certain corporations designated in Section 611, Chapter 120, Illinois Revised Statutes, 1951, and telegraph companies are assessed locally by local assessors, whose assessments are annually reviewed by the Department of Revenue according to Section 627 of Chapter 120, acting as an equalizing authority with the power to determine and certify an equalization factor or multiplier applicable to all locally assessed property in order to produce a ratio of assessed value to full, fair cash value equivalent to 100 per cent. The Department of Revenue, therefore, has a two-fold duty. As to railroads and the capital stock of certain corporations, it has and performs an assessment duty or function. As to all property locally assessed by the local assessor and Board of Review in each county, it has the equalization duty or function to determine the multiplier which is designed to bring uniformity as between the various counties of the state in the assessment by local officials (People v. Saad, 411 Ill. 390, 397, 104 N. E. 2d 273, 277). The assessment duty is set forth in Section 611 and the equalization duty is set forth in Section 627 of Chapter 120, Illinois Revised Statutes. As a result of the foregoing, it can readily be seen that **the Illinois Constitution permits and the General Assembly has treated railroad companies as a different class of taxpayers in the assessment of property for ad valorem taxes.** In regard to railroad companies a different formula is expressly provided by statute and a different method in the valuation and assessment of the property of railroad com-

panies is provided by the formula contained in the Statute, in arriving at the assessed values of railroad property. The manner of assessing railroad property and the formula used for determining its assessed valuation does not apply to any other taxpayer in Illinois. In the West Virginia case of Charleston Federal Savings and Loan Association v. Alderson, mentioned above, it appeared that even within the same class of property under the Constitution the local assessor employed a different method in the valuation and assessment of the property of building and loan associations and federal savings and loan associations from that employed in assessing Class 1 property of other taxpayers. The different method used by the West Virginia assessor was not one designated by statutory provision but one adopted by the local assessor in the manner of making the assessment. In that case this court said:

> "It is this difference in the mode of assessing the property of different taxpayers which petitioners contend has resulted in taxing the property of appellants at its full value and real estate of other taxpayers at less than its full valuation, in violation of the equal protection clause."

That same question is a question in this case, except that the difference in valuation is between the property of the railroad company, which is separately treated under the Illinois Statute, and the property of other taxpayers, which cause its dissimilarity to railroad property as valued and assessed under other Sections of the Revenue Act. If the inequality in the Charleston Federal Savings and Loan Association case was not in violation of the equal protection clause, it is submitted, a fortiori, that the inequality in the instant case is not in violation of the equal protection clause because railroad property in Illinois is treated as a separate classification of property from all other taxable

property and has a separate and distinct statutory method and formula for the determination of its assessed valuation. In the Charleston Federal Savings and Loan Association case the evidence which showed a basis for true comparison between property of the **same class** failed to disclose any unreasonable discrimination resulting in inequality in violation of the equal protection clause.

In the instant case the law of Illinois conclusively establishes the difference in treatment of railroad property from all other property for taxation purposes and **the Petitioner in its written objections wholly failed to set forth any facts or allegations establishing any basis for comparison between the assessed valuation of locally assessed property and the assessed valuation of railroad property.** This basis for comparison was not alleged or stated in the Petitioner's objections in the case at bar, and this Court held in the Charlestown Federal Savings and Loan Association case that the evidence before the Court in that case failed to prove such inequality and discrimination. The Illinois Supreme Court has in other cases held that in tax objection cases it is necessary for the objector to make allegation of sufficient facts to show a basis for accepting a statement of the objector as to a higher valuation on his property over the property of others, and that a blanket allegation to that effect without providing other items of like property with which to make comparison in values with the objector's property was insufficient. In other words, **the objector must state facts sufficient for the Court to make the comparison in values which the objector seeks to draw** (Illinois Commercial Telephone Co. v. Smothers, 411 Ill. 67, 103 N. E. 2d 59; Budberg v. County of Sangamon, 4 Ill. 2d 518-522, 123 N. E. 2d 479; Department of Revenue v. Warren Petroleum Corporation, 2 Ill. 2d 483, 119 N. E. 2d 215). Moreover, it has long been settled that the Fourteenth Amendment imposes no iron rule of equal taxation (Bells Gap

Railroad Company v. Commonwealth of Pennsylvania, 134 U. S. 232, 33 L. Ed. 892, 10 S. Ct. 533; St. Louis Southwestern Railroad Co. v. Arkansas, 235 U. S. 350, 59 L. Ed. 865, 35 S. Ct. 99). And the Supreme Court of Illinois has repeatedly announced that under the constitutional provision of that state there is no prohibition against classification of property and taxpayers into different classes and that the uniformity referred to in the Constitution applies to the property of like kind and character and similarly situated (People v. Olymphia Fields Country Club, 374 Ill. 101, 28 N. E. 2d 109; Routt v. Barrett, 396 Ill. 322, 71 N. E. 2d 660). Furthermore, the Supreme Court of Illinois has specifically pointed out that railroads can be classified under a general law uniform in effect and assessed in a different manner and by different officers than those referred to in the first clause of Section 1 of Article IX of the Illinois Constitution (People v. Union Electric Power Co., 392 Ill. 271, 285, 64 N. E. 2d 534, 540).

In further substantiation of the decision of the Illinois Supreme Court, Respondent's Motion to Strike the Petitioner's tax objection **did not admit facts which were not well pleaded.** In the attempt to set up the defense of actual fraud Petitioner's tax objections repeated and reiterated such words as "fraudulent," "discriminatory," "wrongful," "illegal," etc., which the Illinois Supreme Court held to be "general charges, unaccompanied by any facts showing fraudulent or dishonest actions or motives, and to be mere expletives, conclusions of the pleader and not good pleading." It is elementary in the law that facts showing the fraudulent acts must be specifically alleged. It cannot be seriously contended under the Illinois law of pleading that such general charges of fraud would be admitted as against a motion to strike. Under the Illinois law, there were no facts set forth to show any improper, corrupt or illegal motive in making the assessment of

locally assessed property by the local assessors or in determining the multiplier by the Department of Revenue. In attempting to charge fraud Petitioner's objections were wholly deficient (People v. Coen, 415 Ill. 73-79, 112 N. E. 2d 119; People v. Robison, 406 Ill. 280, 285, 94 N. E. 2d 151, 154; People v. Marine Trust Company, 375 Ill. 488, 492-494, 31 N. E. 2d 933).

CONCLUSION.

For the reasons expressed in the opinion of the Supreme Court of Illinois and in this brief, it is respectfully submitted that Certiorari should be denied.

Respectfully submitted,

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